BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 95-835-C - ORDER NO. 96-324

MAY 9, 1996

IN RE: Request of AT&T Communications of the Southern States, Inc. to Implement 1+ and 0+ Presubscription for InterLATA Toll Services in South Carolina.	) ORDER) GRANTING) RECONSIDERATION) AND) CLARIFICATION) IN PART, AND) DENYING) REHEARING

This matter comes before the Public Service Commission of South Carolina (the Commission) on Petitions for Rehearing and/or Reconsideration and/or Clarification filed by AT&T Communications of the Southern States, Inc. (AT&T), the Consumer Advocate for the State of South Carolina (the Consumer Advocate), MCI Telecommunications Corporation (MCI), and the South Carolina Public Communications Association (SCPCA). Returns and/or replies to said Petitions were filed by the South Carolina Telephone Coalition (SCTC), and GTE South, Inc. (GTE).

First, all four Petitions took issue with the Order No. 96-197 setting of July 1, 1997 as the deadline for implementation of 1+ and 0+ Presubscription for IntraLATA Toll Service. Various reasons were given for this objection.

AT&T stated that such a delay is inappropriate because it was inconsistent with the Federal Act, which contemplates

presubscription implementation as soon as it is technologically feasible, and, according to AT&T, any delay must be authorized by an approved exemption, that the record in this case provides no basis in fact for delaying presubscription for 15 months, and also, that the delay disadvantages AT&T in the competitive market place, particularly in those markets in which a toll provider has relationship, corporate or otherwise, with a local exchange company, and can utilize the 15 month delay to establish itself in the market.

The Consumer Advocate objected to the implementation date, basically based on its allegation that the Commission failed to state a basis for delaying implementation. According to the Consumer Advocate, consumers will benefit from competition only as soon as it arrives. Therefore, the Consumer Advocate requests the Commission reconsider its decision to delay implementation of 1+ and 0+ presubscription to July 1, 1997.

MCI noted that Section 253 of the Telecommunications Act of 1996 specifically prohibits the Commission from creating or sanctioning any barriers to the implementation of telecommunications services competition, and that the Commission's deadline of July 1, 1997 is in conflict with the Act. MCI alleges that the delay provided in the Order will give local exchange companies (LECs) additional time within which to establish themselves in the intraLATA toll market. Further, according to MCI, the lateness of the implementation time constitutes a barrier to competition in violation of Section 253 of the Act.

The SCPCA adopted the allegations of AT&T, including its request for modification of the implementation date for 1+ and 0+ presubscription.

We have examined this matter, and have concluded that consumers in South Carolina should be able to get the benefit of 1+ and 0+ presubscription as soon as is practicable. We disagree with the contention that our original deadline is in violation of the Telecommunications Act of 1996, in that, we believe that the record was clear in this proceeding that local telecommunications companies deserved a reasonable time to prepare for the implementation of such presubscription. However, in the interest of bringing to South Carolina consumers the full benefits of our ruling in Order No. 96-197 as quickly as possible, we hereby adopt a modified implementation schedule.

AT&T had requested that in its Petition, at a minimum, the LECs in South Carolina, except BellSouth, be required to implement 1+ and 0+ presubscription on 50% of their access lines within six (6) months of the date of the Order on Reconsideration, on 90% of their access lines within twelve (12) months of the date of the Order on Reconsideration, and on 100% of their access lines by July 1, 1997. We believe, however, that this does not take into account the fact that an interexchange carrier (IXC) may not make a request for implementation of presubscription to certain LECs. Therefore, we hold that a modified implementation schedule is hereby established as follows: Companies other than BellSouth and the South Carolina Telephone Coalition companies shall implement

1+ and 0+ presubscription on 50% of their access lines within six (6) months from the date of this Order, or within six (6) months of the receipt of a bonafide request for 1+ and 0+ presubscription, whichever comes later; 90% of their access lines within twelve (12) months of the date of the Order on Reconsideration, or within twelve (12) months from the date of a bonafide request for 1+ and 0+ presubscription, whichever comes later, and 100% of their lines within fifteen (15) months of the date of this Order on Reconsideration, or within fifteen (15) months from the date of a bonafide request for 1+ and 0+ presubscription, whichever comes later. In addition, should a LEC choose to file for an exemption from this requirement, such exemption must be filed on or before September 1, 1996, so that the Commission can study the request in the context of this implementation schedule. We believe that this modified schedule properly balances the desire for more rapid implementation of 1+ and 0+ presubscription, against the need for time for preparation for implementation by the LECs.

It should be noted that this Reconsideration Order does not impact SCTC members, due to the adoption of the conditions proposed by SCTC's witness, and in SCTC's brief, and subsequently, adopted by this Commission in Order No. 96-197. Those conditions, as adopted in that Order, are hereby affirmed, since we continue to believe that SCTC LEC's present special circumstances when considering implementation of 1+ and 0+ presubscription. This Order does not affect BellSouth at this time, due to the

provisions of the Telecommunications Act of 1996.

AT&T, MCI, and the SCPCA also question some component of our holdings on cost recovery as seen in Order No. 96-197. AT&T believes that this Commission should clarify what "costs" are recoverable by the LECs. Further, AT&T requests that the Commission reconsider its conclusion that costs should be recovered only from benefiting IXCs, and establish a fair and equitable process for allocating costs among all benefiting competitive carriers. Finally, AT&T requests that the Commission reconsider its conclusion that the recovery period for costs should be one (1) year from conversion.

MCI and SCPCA concur in these contentions. We do agree that a clarification of Order No. 96-197 is in order with regard to who should bear the costs of 1+ and 0+ presubscription.

Upon further consideration of this matter, we believe that costs should be recovered and borne by the IXCs, the long distance resellers, and the alternate access providers. All of these parties should share in the cost to implement 1+ and 0+ presubscription, since all will have the opportunity to benefit from it.

At this point, we decline to rule on what types of costs may be recovered, and require that the LECs impacted by this reconsideration file for Commission approval by September 1, 1996 for recovery of their costs of implementation of 1+ and 0+ presubscription. This Commission will examine these filings on a case-by-case basis, and other parties will have an opportunity to

comment on these filings.

Upon reconsideration of our earlier holding in Order No. 96-197 that all costs should be recovered within one (1) year, we do agree with the statement contained in MCI's Petition that an up-front expense may be created, which could discourage competitive entry, although we disagree that a barrier to entry was created in conflict with the Telecommunications Act of 1996. AT&T has requested implementation of an eight (8) year recovery period.

We hold that the costs of 1+ and 0+ presubscription should be recovered over a four and one-half (4½) year period. We believe that this is a reasonable time that allows the IXCs, resellers, and alternate access providers time to spread their costs over a reasonable period of time, but such costs are not recoverable over such short a time as to possibly discourage competitive entry.

MCI alleges in its Petition that the findings of the Commission are not supported by substantial evidence, nor are the findings of fact and conclusions of law stated separately as allegedly required by law. First, the Commission believes that its findings in Order No. 96-197 were supported by the substantial evidence of record. Second, as stated in the SCTC return to the Petition for Reconsideration, the South Carolina Supreme Court and Court of Appeals have rejected this argument regarding the separate statement of findings of fact and conclusions of law in similar cases. Hamm v. American Telephone & Telegraph Company, 302 S.C. 210, 394 S.E.2d 842 (1990), and Cloyd v. Mabry, 295 S.C.

86, 367 S.E.2d 171 (Ct. App. 1988), held that findings of fact and conclusions of law need not be presented in any particular format, but need only be sufficiently detailed to enable a reviewing court to determine whether the findings are supported by the evidence, and whether the law has been correctly applied. It would appear to this Commission that we have met the standard set out in these cases.

In addition to adopting the request of AT&T, the SCPCA also alleges that this Commission should authorize a limited form of dialing parity for independent payphone providers. According to SCPCA, the COCOT guidelines prohibit IPPs from altering an end-user's dialing sequence for local and intraLATA calls. We hold that such an issue is a narrow one, and is one that may possibly be considered elsewhere. We do not believe that this Docket lends itself to consideration of this limited form of dialing parity referred to by the SCPCA.

We also hold that all other reconsideration requests made by any party not consistent with the provisions of this Order, and all requests for rehearing are hereby denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Deputy Executive Director

(SEAL)